

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MAGDALENO GUERRERO	§	CIVIL ACTION NO.
	§	
v.	§	
	§	
FIESTA MART, L.L.C.	§	NOTICE OF REMOVAL

NOTICE OF REMOVAL

TO THE UNITED STATES DISTRICT COURT:

Defendant, **FIESTA MART, L.L.C.**, pursuant to 28 U.S.C. §§1441 and 1332, provides notice of removal of this action styled *Magdaleno Guerrero vs. Fiesta Mart, L.L.C.*, Cause No. 2022-34588, currently pending in the 270th Judicial District Court of Harris County, Texas, and in support thereof, respectfully shows unto this Court as follows:

1. Plaintiff, Magdaleno Guerrero, filed his Original Petition on June 9, 2022, claiming personal injuries received on or about May 5, 2022 when he slipped and fell at Fiesta Mart store located at 7510 Belfort Avenue, Houston, Texas 77011. Plaintiff served Defendant with the citation on June 13, 2022; therefore, this notice is timely under 28 U.S.C. §§1446(b).

2. Pursuant to 28 U.S.C. §§1446 and the Local Rules of the United States District Court for the Southern District of Texas, attached are the following:

- a. All executed process in the case (Exhibit A);
- b. Pleadings asserting causes of action and all answers to such pleadings (Exhibit B);
- c. All orders signed by the state judge (none);
- d. The docket sheet (none);
- e. An index of matters being filed (Exhibit C);
- f. A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit D)

These documents represent all that are presently available as required.

3. The District Courts of the United States have original jurisdiction over this action by reason of diversity of citizenship between the parties. 28 U.S.C. §1332. Plaintiff's Original Petition alleges that Plaintiff, Magdaleno Guerrero, resides in Harris County, Texas, and therefore is a citizen of the state of Texas. Although Defendant, Fiesta Mart, L.L.C., is a limited liability company organized under the laws of Texas, its sole member is Chedraui USA, Inc., a Delaware corporation with its principal place of business in California. *See* Exhibit E. Defendant, Fiesta Mart, L.L.C.'s, citizenship as an LLC is determined by the citizenship of its members.¹ A corporation, such as Chedraui USA, Inc., is deemed to be a "citizen" of the state where it maintains its principal place of business and the state of its incorporation.² Therefore, Defendant is a citizen of the states of Delaware and California, the principal place of business and the state of incorporation of Fiesta Mart, L.L.C.'s sole member, Chedraui USA, Inc.

4. Plaintiff's Original Petition in state court seeks damages of \$250,000.00 or less, and thus the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs. In an apparent attempt to avoid removal, plaintiff "further pleads" the amount in controversy does not exceed \$75,000.00. However, plaintiff's petition claims, "severe injuries to his left knee, hip and leg," resulting in Past and future medical expenses, past and future pain, suffering and mental anguish, past and future physical impairment, past and future physical disfigurement' and past lost wages and future loss of earning capacity. Plaintiff's only pled limitation of damages is "within the jurisdictional limits of the court, and no stipulation limiting plaintiff's recovery to damages below \$75,000 has been filed in state court prior to this removal."³ Because plaintiff's pleadings

¹ *See e.g., Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

² *See* 28 U.S.C. §1332(c)(1); *see also, Hertz Corp. v. Friend*, 559 U.S. 77. 130 S. Ct. 1181, 1185-85 (2010).

³ *See Martinez v. Liberty Ins. Corp.*, No. H-19-3956, 2019 U.S. Dist. LEXIS 217051, at *6 (S.D. Tex. 2019)([P]laintiff seeking to avoid federal jurisdiction may do so by filing a binding stipulation with the original complaint that limits recovery to an amount below the jurisdictional threshold

seek less than \$250,000, no limitation is actually imposed by the “further pleading,” and plaintiff is seeking damages for significant injury and lost earnings in the past and the future, the amount in controversy requirement for removal are met.

5. Removal of this cause of action is proper under 28 U.S.C. §1441. It is a civil action brought in state court and the District Courts of the United States have original jurisdiction over this action under 28 U.S.C. §1332, since the Plaintiff and the Defendant are diverse in citizenship.

6. As required by 28 U.S.C. §1441, the 270th Judicial District Court of Harris County, Texas falls within the geographical purview of this Court, and thus, venue is proper in the United States District Court of the Southern District of Texas, Houston Division.

7. Written notice of filing of this Notice of Removal is being promptly given to Plaintiff and a notice of Filing of Notice of Removal is promptly being filed with the 270th Judicial District Court in Harris County, Texas, as required by 28 U.S.C. §1446(d).

WHEREFORE, PREMISES CONSIDERED, Defendant, Fiesta Mart, L.L.C., prays that the state action now pending in the 270th Judicial District Court in Harris County, Texas, be removed to this Court, and for any further relief to which Defendant is justly entitled.

Respectfully submitted,

RAMSEY & MURRAY, P.C.



Craig M. Shivers, Jr.
SBOT No. 24033064
800 Gessner, Suite 325
Houston, Texas 77024
713/613-5400
713/613-5414 (fax)
cshivers@ramseyandmurray.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that on this the 13th day of July 2022, a true and correct copy of the foregoing Notice of Removal was electronically filed with the Clerk of the Court using the CM/ECF system and was served via the CM/ECF system to Plaintiff through her counsel or record identified below:

DASPIT LAW FIRM
Jesus A. Salinas
State Bar No.: 24106387
440 Louisiana Street, Suite 1400
Houston, Texas 77002
(713) 322-4878 – Telephone
(713) 587-9086 – Facsimile
e-service@daspitlaw.com



Craig M. Shivers, Jr.